(1985) 07 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No. 19543 of 1981

N.G.E.F. Ltd. APPELLANT

Vs

Collector of Central Excise, Bangalore RESPONDENT

Date of Decision : 17-07-1985

Acts Referred:
Central Excise Rules, 1944 — Rule 56A, 56A (7), 8

Citation : (1985) 6 ECC 68 : (1986) 6 ECR 127 : (1985) 22 ELT 705

Hon'ble Judges : S.R. Rajasekhara Murthy, J

Bench : Single Bench

Advocate : G. Sarangan, for the Appellant; K. Shivashankar Bhat, Central Government Sr. Standing Counsel, for the Respondent

Judgement

1. The petitioner - M/s. N.G.E.F. Ltd. a Government of Karnataka undertaking, has challenged the Endorsement issued by the Asst. Collector, Central Excise, East Division, Bangalore, dated 18-7-1981 (Anx-E).

2. The petitioner-company manufactures essentially among other products - electrical motors. In the manufacture of electric motors, electrical stamping are used in the manufacture of die-cast-rotors which go in the manufacture of the end product, namely, electric motors.

3. The petitioner was permitted to avail of the proforma credit under Rule 56A of the Central Excise Rules, 1944, (Rules) in respect of the electrical stampings used in the manufacture of electric motors. The petitioner-company itself used to manufacture die-cast-rotors which are necessary for the electric motors. It so happened that during 1981-82 it did not have the necessary capacity to manufacture die-cast-rotors sufficient for the manufacture of the required number of electrical motors. In these circumstances, the petitioner-company entered into a contract with M/s. Eltex Engineering Corporation, Coimbatore, for supplying the die-cast-rotors using electrical stampings supplied by the petitioner. For this purpose, the petitioner made an application in the prescribed form under Rule 56A(7) of the Central Excise Rules to the Department. This

application was rejected by the Asst. Collector, Central Excise by his endorsement dated 18-7-1981 (Anx-E), which is reproduced below :-

"Sub :- C. E. Rule 56A - Availment for Electrical Stampings - Reg.

Please refer to your letter C/880/81-82 dated 15-4-1981. Permission to avail proforma credit in respect of duty paid electrical stampings used in the manufacture of die cast rotors cannot be granted inasmuch as die cast rotors are fully exempt from duty and cannot be accounted as such in RG 23. Further, it will not be possible to correlate the stampings going out with the die cast rotors coming back in terms of weight, since aluminium is added at the processing factory."

4. The grievance of the petitioner is that the electrical stampings which could not be utilised by it in the manufacture of die-cast-rotors to the extent of its requirement, had to be supplied to the Eltex Eng. Corporation, who, in turn manufactured the electrical die-cast-rotors by using these stampings.

5. Under Rule 8 of the Rules, the Central Government may, by notification, exempt any excisable goods from the whole or any part of duty leviable on such goods.

A Notification dated 1-3-1979, which was amended from time to time, was issued under the said Rules by the Central Government which sets out the exemption in respect of the excisable goods which could be availed of under the Rules. Under the same notification it is provided that for the purpose of claiming exemption, the procedure set out in Rule 56A shall be followed. Item No. 7, in the said notification is Electric Stampings and laminations, all sorts.

One of the conditions for claiming exemption under the said notification is that inputs specified in Col. No. 3 of the Table, annexed to the notification, should be used in the manufacture of final products specified in the corresponding entry in Col. No. 5. It can be seen from the Table that electrical stampings under entry-7 form the component parts or the inputs specified in the manufacture of the final products, namely, electric motors.

Rule 56A of the Rules, provides for the special procedure for movement of duty paid materials or component parts for use in the manufacture of finished excisable goods.

6. Learned Counsel for the petitioner has relied upon sub-rule (7) of Rule 56A of the Rules for the purpose of his case. The said sub-rule is reproduced below :-

"(7) A manufacturer may apply to the collector for removal of the material or component parts as such, or the material or component parts which have been partially processed during the course of manufacture of the excisable goods, to a place outside his factory for purposes of tests, repairs, refining, reconditioning or carrying out any other operations necessary for the manufacture of the excisable goods and return thereafter to his factory or further use in the manufacture of the excisable goods."

As it happens in the present case, the stampings had to be taken to a place outside the factory and supplied to Eltex Corporation, Coimbatore, for the purpose of getting them back in the shape of die-cast-rotors.

What is provided in sub-rule (7) is the procedure, which is attracted to cases of exemption as per the notification (Anx-A). Petitioner''s case is that this sub-rule should be applied to his case. There is substance in what the learned Counsel Sri Sarangan has submitted in this behalf.

7. It is argued by Sri Shivashankar Bhat, Central Government Sr. Standing Counsel that under the notification, Annexure-A, that the electrical stampings which go out of the factory for whatever purpose and is supplied to Eltex Corporation comes back to the petitioners factory as a finished product which, by itself, is an excisable item under the Act, and in these circumstances, the petitioner is not entitled to avail of the proforma credit facility, as provided under the Rules.

The endorsement issued by the Asst. Collector (Anx-E), does not deal with the case put forward by the petitioner and the Asst. Collector makes a distinction between die-cast-rotors used as a component by the petitioner-company in the manufacture or electric motors, and the electrical stampings going out of the factory and coming back in the shape of die-cast-rotors.

8. The question that skill arises for my consideration is : whether in the circumstances put forward by the petitioner, it was entitled to avail of the proforma credit facility. According to him, the provisions in sub-rule (7) should be applied to his case and he should be permitted to avail of the proforma credit facility in respect of the stampings supplied to Eltex Corporation, Coimbatore. This, however, should be subject to such conditions or terms which the Collector may impose on the petitioner as provided under clause (ii) of sub-rule (7) of Rule 56A of the Rules.

9. In this view of the matter, the petitioner should succeed, and, consequently, I allow the writ petition, and quash the endorsement dated 18-7-1981 (Anex-E), and remit the matter to the Asst. Collector, Central Excise, East Dn., Bangalore - 2nd respondent, to deal with the matter in accordance with law and in the light of the observations made in this order.

10. Rule issued is made absolute.

